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ADOBE SYSTEMS INCORPORATED

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADOBE SYSTEMS INCORPORATED, a Delaware Corporation,

Plaintiff,

v.

ISAAC FREDLEY, an Individual d/b/a TheMacSpecialists; and DOES 1-10, Inclusive,

Defendants.

Case No.: 5:17-cv-02116

COMPLAINT FOR DAMAGES:

(1) FEDERAL COPYRIGHT INFRINGEMENT [17 U.S.C. §501(a)];
(2) FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114 / *Lanham Act* §32(a)];
(3) FALSE DESIGNATION OF ORIGIN / FALSE OR MISLEADING ADVERTISING / UNFAIR COMPETITION [15 U.S.C. §1125(a) / *Lanham Act* §43(a)];
(4) TRADEMARK DILUTION [15 U.S.C. §1125(c)]; and
(5) UNLAWFUL / UNFAIR / FRAUDULENT BUSINESS PRACTICES [*California Business & Professions Code* §17200]

[DEMAND FOR JURY TRIAL]

COMES NOW, Plaintiff Adobe Systems Incorporated (hereinafter "Plaintiff" or "Adobe") to hereby file its Complaint for Damages against Defendant Isaac Fredley and Does 1-10, inclusive (collectively, "Defendants").

PARTIES

1. Plaintiff is now, and was at the time of the filing of this Complaint and at all intervening times, a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business in San Jose, California.

2. Plaintiff is informed and believes and thereon alleges that Defendant Isaac Fredley is an individual doing business as TheMacSpecialists.

3. Plaintiff is informed and believes and thereon alleges that Defendant Isaac Fredley and Does 1-10, inclusive, sued herein by fictitious names, are jointly, severally and concurrently liable and responsible upon the causes of action hereinafter set forth.

4. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein Defendants Fredley and Does 1-10, inclusive, and each of them, were the agents, servants and employees of every other Defendant and the acts of each Defendant, as alleged herein, were performed within the course and scope of that agency, service or employment.

5. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants herein named as Does 1-10, inclusive, are unknown to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious names. When the true names and capacities of said Defendants have been ascertained, Plaintiff will amend this pleading accordingly.

JURISDICTION

6. This Court has federal subject matter jurisdiction over this matter pursuant to 28 United States Code ("U.S.C.") §§1331 and 1338 (a) and (b), in that the case arises out of claims for copyright infringement under 17 U.S.C. §501(a) and trademark infringement, false designation of origin / false or misleading advertising / unfair competition, and dilution under the *Lanham Act* (15 U.S.C. §1051 *et seq.*). This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. §§1367(a) and 1338 (a) and (b).

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7. Personal jurisdiction exists over Defendants because on information and belief, Defendants have purposefully directed their actions to California and within this judicial district, and/or have otherwise availed themselves of the privileges and protections of the laws of the State of California, such that this Court's assertion of jurisdiction over Defendants does not offend traditional notions of fair play and due process.

8. Personal jurisdiction further exists over Defendants because on information and belief, Defendants have committed acts of infringement and unfair competition in this district and/or Defendants have sufficient minimum contacts with this district such that the exercise of jurisdiction over Defendants by this Court does not offend traditional notions of fair play and substantial justice. Among other things, Defendants have advertised, offered to sell, sold and distributed personal computers with unauthorized and/or counterfeit software programs that infringe upon the copyrights and trademarks of Plaintiff using the services of Northern California-based eBay, Inc. and PayPal, Inc.

9. Venue is proper, *inter alia*, pursuant to 28 U.S.C. §1391(b), because on information and belief, a substantial part of the events or omissions giving rise to these claims occurred in this judicial district and has caused damages to Plaintiff in this district. Venue is also proper, *inter alia*, pursuant to 28 U.S.C. §1400(a), because on information and belief, Defendants may be found in this judicial district through their contacts with Plaintiff, eBay, Inc. and PayPal, Inc. Supplemental or pendent jurisdiction exists over any remaining claims due to the fact that all claims alleged herein are so closely related that they arise from the same nexus of facts and form part of the same case or controversy.

INTRADISTRICT ASSIGNMENT

10. Pursuant to Rule 3-2(c) of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California ("Civil L.R.") and the Court's Assignment Plan, this is an Intellectual Property Action to be assigned on a district-wide basis.

11. Assignment to the San Jose Division would be appropriate, pursuant to Civil L.R. 3-2(e), because a substantial part of the events that give rise to Plaintiff's claims against Defendants

occurred in Santa Clara County, California, where Plaintiff's principal place of business is located.

GENERAL ALLEGATIONS

Plaintiff and its Famous ADOBE® Software Products

12. Plaintiff is a global leader in developing and distributing innovative computer software. Its products and services offer developers and enterprises tools for creating, managing, delivering and engaging with compelling content across multiple operating systems, devices and media. The software industry is competitive, and Plaintiff undertakes great expense and risk in conceiving, developing, testing, manufacturing, marketing, and delivering its software products to consumers. Software piracy undermines Plaintiff's investment and creativity, and misleads and confuses consumers.

13. The success of Plaintiff's ADOBE®-branded products and services, among others (collectively referenced and referred to herein as "Adobe-Branded Software"), is due in part to Plaintiff's marketing and promotional efforts. These efforts include advertising and promotion through Plaintiff's websites, print and other Internet-based advertising, among other efforts. Plaintiff has spent substantial time, money and effort in building up and developing consumer recognition, awareness and goodwill in its Adobe-Branded Software and the associated marks thereto.

14. The success of the Adobe-Branded Software, and other products and services related thereto, is not due to Plaintiff's promotional efforts alone. Rather, the popularity of Adobe-Branded Software is also due in part to consumers and the word of mouth buzz consumers have generated.

15. As a result of Plaintiff's efforts, the quality of Plaintiff's products, and the promotion and word of mouth buzz, Adobe-Branded Software and the associated marks thereto have been prominently placed in the minds of the public. Consumers, purchasers and members of the public have become familiar with Plaintiff's software and other products and services and have come to recognize Adobe-Branded Software and the associated marks thereto and associate them exclusively with Plaintiff. Plaintiff has acquired a valuable reputation and goodwill among the public as a result of such association. Indeed, Adobe-Branded Software and the associated marks

thereto are famous in the United States and throughout the world and have acquired secondary meaning in the minds of consumers.

16. While Plaintiff has gained significant common law trademark and other rights in its Adobe-Branded Software through its use, advertising and promotion, Plaintiff has also protected its valuable rights by filing for and obtaining federal trademark and copyright registrations.

17. Plaintiff has secured registrations for its ADOBE®, ADOBE ILLUSTRATOR®, ADOBE PHOTOSHOP®, CREATIVE SUITE®, DREAMWEAVER®, ILLUSTRATOR®, INDESIGN® and PHOTOSHOP® word and design trademarks, among others, with the United States Patent and Trademark Office ("U.S.P.T.O.") (collectively referenced and referred to herein as "Plaintiff's Trademarks").

18. Specifically, Plaintiff owns U.S.P.T.O. registrations for the "ADOBE" word mark under U.S. Registration Numbers ("U.S. Reg. Nos.") 1,475,793, and design marks under U.S. Reg. Nos. 1,901,149 and 2,081,343:

(U.S. Reg. No. 1,901,149)

(U.S. Reg. No. 2,081,343)

19. Plaintiff also owns the following U.S.P.T.O. registrations for the "ADOBE ILLUSTRATOR" word mark under U.S. Reg. No. 1,479,408, the "ADOBE PHOTOSHOP" word mark under U.S. Reg. No. 1,651,380, the "CREATIVE SUITE" word mark under U.S. Reg. No. 3,111,341, the "DREAMWEAVER" word mark under U.S. Reg. No. 2,294,926, the "ILLUSTRATOR" word mark under U.S. Reg. No. 2,060,488, the "INDESIGN" word mark under U.S. Reg. No. 2,439,079, and the "PHOTOSHOP" word marks under U.S. Reg. Nos. 1,850,242

and 2,920,764.

20. Similarly, Plaintiff 's Adobe-Branded Software is copyrightable subject matter, and Plaintiff has secured copyright registrations for various versions of its software, specifically including but not limited to Adobe Creative Suite 6 Design Standard (TX 7-568-688), Adobe Bridge CC (TX 7-774-912), Adobe Dreamweaver CS6 (TX 7-555-170), Adobe Illustrator CS6 (TX 7-620-302), Adobe InDesign CS6 (TX 7-620-297), Adobe Media Encoder CS6 (TX 7-570-115), Adobe Photoshop CS6 (TX 7-554-295), Adobe Photoshop CS6 Extended (TX 7-554-299), among others, with the United States Copyright Office (collectively referenced and referred to herein as "Plaintiff's Copyrights").

Plaintiff's Licensing Restrictions

21. As part of its international licensing and distribution programs, Plaintiff imposes various restrictions on the distribution of all Adobe-Branded software. Every piece of Adobe-Branded Software is licensed. Every distribution agreement entered into by Plaintiff clearly states that all Adobe-Branded Software is subject to a license, and anyone obtaining any Adobe-Branded Software is only granted a license, pursuant to Plaintiff's Software License Agreement ("SLA"). Plaintiff maintains title to the Adobe-Branded Software at all times and at no point does it transfer any ownership of title. Each and every piece of Adobe-Branded Software is subject to numerous restrictions on use, location of distribution, transfer and even who is qualified to obtain the product, in certain circumstances.

22. One specific type of licensed Adobe-Branded Software is volume-licensed software. To better serve its organizational clients that require multiple copies of the same software for multiple users, Plaintiff has developed various programs through which an organization may purchase a piece of Adobe-Branded Software and activate it on multiple computers, simply paying an additional fee (often discounted from the full retail price) for each additional license. These licenses, however, are limited to users or machines within the same organization. These licenses are not to be sold to individuals.

23. Additionally, at times, Plaintiff will distribute pre-release or beta versions of Adobe-Branded Software. Beta software does not represent the final version of a product and is

not intended for general, commercial distribution. Beta software may not be resold, pursuant to Plaintiff's SLA as well as the License Agreement for Pre-release Software. By accepting the beta software, testers agree that all copies of beta software will be returned or destroyed upon the earlier of Plaintiff's request or upon Plaintiff's commercial release of such software.

Defendants' Wrongful and Infringing Conduct

24. Particularly in light of the success of Plaintiff and Plaintiff's products as well as the reputation they have gained, Plaintiff and its well-recognized products have become targets for unscrupulous individuals and entities who wish to take a free ride on the goodwill, reputation and fame Plaintiff has spent considerable effort to build up in its products and marks and the works embodied in Plaintiff's software products.

25. A large number of individuals and entities deal in unauthorized, infringing, pirated and/or counterfeit Adobe-Branded Software products. Their actions vary and include manufacturing, copying, exporting, importing, advertising, promoting, selling, and distributing counterfeit and/or otherwise unauthorized Adobe-Branded Software products. Other infringing activity consists of taking counterfeit or unauthorized copies of Adobe-Branded Software and installing or copying the illicit copies onto personal computers, both desktop and laptop models, which are then sold to the public. The purchaser of the computer is under the mistaken belief that the Adobe-Branded Software installed on the computer is genuine, when in fact it is an illegal reproduction.

26. Plaintiff investigates and enforces against such piratical and counterfeiting activity regularly and through such efforts learned of Defendants and Defendants' actions advertising, offering for sale, selling and/or distributing computers preloaded with infringing Adobe-Branded Software products through the Internet sales platform located at www.ebay.com (hereinafter "eBay"), using the seller ID "themacspecialists."

27. For every sale made through eBay, Defendants transact payment through the Northern District of California-based, PayPal, Inc. (hereinafter "PayPal"). All money received by Defendants flows through California through the website and payment processor located at www.paypal.com.

28. Specifically, on May 28, 2015, Plaintiff's investigator purchased an "Apple MacBook Pro 15.4" 2.8GHz 4GB 500GB CS6 iLive iWork Office XBMC" from eBay seller "themacspecialists" from the State of California. Payment was made through PayPal to Defendant Isaac Fredley (fredleysir@gmail.com) for a cost of $499.99.

29. On or about June 12, 2015, Plaintiff's investigator received a package, pursuant to the May 28, 2015 order, with a return address of "TheMacSpecialists, 2146 W Isabella Ave, Apt 117, Mesa, AZ 85202 US." The package contained one Macbook Pro laptop. Thereafter, Plaintiff analyzed the purported Adobe-Branded Software loaded on the laptop computer sold and determined that the Adobe-Branded Software had been installed without a valid serial number.

30. On October 26, 2016, Plaintiff's investigator purchased an "Apple Mac Mini Core 2 Duo 2.0 GHz 4GB 250GB 10.7.5 iWork iLife Office more!" from eBay seller "themacspecialists" from the State of California. Payment was made through PayPal to Defendant Isaac Fredley (fredleysir@gmail.com) for a cost of $179.99.

31. On or about October 31, 2016, Plaintiff's investigator received a package, pursuant to the October 26, 2016 order, with a return address of "THE MACSPECIALISTS, 2146 W ISABELLA AVE.APT 117, MESA AZ 85202." The package contained one Mac Mini computer. Thereafter, Plaintiff analyzed the purported Adobe-Branded Software loaded on the computer sold and determined that the Adobe-Branded Software had been installed without a valid serial number.

32. Plaintiff has never authorized or consented to Defendants' use of Plaintiff's Trademarks, or any confusingly similar mark, or Plaintiff's Copyrights. Specifically, Plaintiff has never authorized Defendants to manufacture, copy, sell, distribute, or alter any of Plaintiff's Copyrights or use any of Plaintiff's Trademarks on or in connection with any copied, altered or unauthorized Adobe-Branded Software contained on Defendants' computers.

33. On information and belief, it has become apparent to Plaintiff that Defendants are engaged in an ongoing piratical concern whose primary business consists of systematically infringing upon Plaintiff's Trademarks and Copyrights in order to generate substantial illegal revenues.

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34. By these sales and on information and belief, Defendants have advertised, marketed, offered for sale, sold and distributed numerous counterfeit and/or unauthorized Adobe-Branded Software products to consumers that infringe on Plaintiff's Trademarks and Copyrights, resulting in thousands if not millions of dollars in ill-begotten gains from Defendants' infringement. Defendants' dealings in counterfeit and/or unauthorized software products violate Plaintiff's exclusive rights in Plaintiff's Copyrights and use images and marks that are confusingly similar to, identical to, and/or constitute counterfeit reproductions of Plaintiff's Trademarks to confuse consumers and aid in the promotion and sales of Defendants' unauthorized product.

35. Defendants' conduct and use began long after Plaintiff's adoption and use of its ADOBE®, ADOBE ILLUSTRATOR®, ADOBE PHOTOSHOP®, CREATIVE SUITE®, DREAMWEAVER®, ILLUSTRATOR®, INDESIGN® and PHOTOSHOP® word and design trademarks, after Plaintiff obtained the copyright and trademark registrations alleged above, and after Plaintiff's Trademarks became famous. Indeed, Defendants had knowledge of Plaintiff's ownership of the Trademarks, and of the fame in such Trademarks, prior to the actions alleged herein and adopted them in bad faith and with intent to cause confusion and dilute Plaintiff's Trademarks. Defendants also had knowledge of Plaintiff's ownership of its Copyrights and copied, imported, offered for sale, sold, and/or distributed unauthorized copies of the Copyrights in order to illegally profit from Plaintiff's Copyrights.

36. Defendants' actions were committed in bad faith and with the intent to dilute Plaintiff's Trademarks, and to cause confusion, mistake or to deceive the consuming public and the public at large as to the source, sponsorship and/or affiliation of Defendants and/or Defendants' counterfeit and unauthorized goods. By their wrongful conduct, Defendants have traded upon and diminished Plaintiff's goodwill.

37. In committing these acts, Defendants have, among other things, willfully and in bad faith committed the following, all of which has and will continue to cause irreparable harm to Plaintiff: (i) willfully infringed Plaintiff's Copyrights; (ii) infringed and diluted Plaintiff's rights in Plaintiff's Trademarks; (iii) applied counterfeit marks; (iv) misled the public into believing there is an association or connection between Defendants and Plaintiff and/or the products advertised

and sold by Defendants and Plaintiff; (v) used false designations of origin on or in connection with its goods and services; (vi) committed unfair competition; and (vii) unfairly profited from such activity. Unless enjoined, Defendants will continue to cause irreparable harm to Plaintiff.

FIRST CAUSE OF ACTION

(Federal Copyright Infringement against Defendant ISAAC FREDLEY and DOES 1-10, Inclusive)

[17 U.S.C. §501(a)]

38. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-37.

39. Plaintiff is the exclusive owner of Plaintiff's Copyrights in the Adobe-Branded Software along with images and other protectable works related thereto and possesses copyright registrations with the United States Copyright Office relating to the same.

40. Defendants did not seek and failed to obtain Plaintiff's consent or authorization to import, utilize, manufacture, reproduce, copy, display, prepare derivative works, distribute, sell, transfer, rent, perform, and/or market Plaintiff's copyright-protected materials.

41. Without permission, Defendants intentionally and knowingly reproduced, counterfeited, copied, displayed, manufactured and/or distributed Plaintiff's protected works by importing, offering, advertising, promoting, retailing and/or selling counterfeit and/or unauthorized Adobe-Branded Software, which are, at a minimum, substantially similar to Plaintiff's Copyrights.

42. Defendants' acts as alleged herein, constitute infringement of Plaintiff's Copyrights, including Plaintiff's exclusive rights to reproduce, distribute and/or sell such protected material.

43. Defendants' knowing and intentional copyright infringement as alleged herein has caused and will continue to cause substantial and irreparable harm to Plaintiff and has and will continue to cause damage to Plaintiff. Plaintiff is therefore entitled to injunctive relief, including but not limited to preliminary relief, as well as damages, Defendants' profits, increased damages, and reasonable attorney's fees and costs.

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SECOND CAUSE OF ACTION

(Infringement of Registered Trademarks against Defendant ISAAC FREDLEY and DOES 1-10, Inclusive)

[15 U.S.C. §1114/*Lanham Act* §32(a)]

44. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-43.

45. Plaintiff has continuously used Plaintiff's Trademarks in interstate commerce since at least as early as 1993.

46. Plaintiff, as the owner of all right, title and interest in and to Plaintiff's Trademarks, has standing to maintain an action for trademark infringement under the Trademark Statute, 15 U.S.C. §1114.

47. Defendants are, and at the time of their actions complained of herein were, actually aware that Plaintiff is the registered trademark holder of Plaintiff's Trademarks.

48. Defendants did not and failed to obtain the consent or authorization of Plaintiff as the registered owner of Plaintiff's Trademarks to deal in and commercially distribute, market and sell Adobe-Branded Software products bearing Plaintiff's Trademarks into the stream of commerce.

49. Defendants intentionally and knowingly used in commerce the reproductions, counterfeits, copies, and/or colorable imitations of Plaintiff's registered marks in connection with the sale, offering for sale, and/or distribution of Defendant's software products by importing, offering, advertising, promoting, retailing, selling, and/or distributing counterfeit and/or unauthorized copies of Adobe-Branded Software bearing Plaintiff's Trademarks.

50. Defendants reproduced, counterfeited, copied, and colorably imitated Plaintiff's Trademarks and applied such reproductions, counterfeits, copies, or colorable imitations to labels, signs, prints, packages, wrappers, receptacles and/or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution and/or advertising of goods. Defendants thereupon imported, offered, advertised, promoted, retailed, sold, and/or distributed products containing counterfeit and/or unauthorized Adobe-Branded Software bearing Plaintiff's Trademarks.

51. Defendants' egregious and intentional use and sale of counterfeit and/or unauthorized items bearing Plaintiff's Trademarks is likely to cause confusion or mistake, or to deceive, mislead, betray, and defraud consumers who believe that items being offered for sale by Defendants are authorized products manufactured and distributed by Plaintiff.

52. Defendants' acts have been committed with knowledge of Plaintiff's exclusive rights and goodwill in Plaintiff's Trademarks. Defendants' acts have been committed with knowledge that their conduct infringes Plaintiff's rights in Plaintiff's Trademarks. Defendants have acted willfully, in bad faith, and with the intent to cause confusion, mistake or to deceive.

53. Plaintiff has suffered and will continue to suffer substantial and irreparable injury, loss and damage to its rights in and to Plaintiff's Trademarks and the goodwill associated therewith, for which it has no adequate remedy at law. Thus, Plaintiff requests injunctive relief, including but not limited to preliminary relief.

54. Defendants' continued and knowing use of Plaintiff's Trademarks without Plaintiff's consent or authorization constitutes intentional infringement of Plaintiff's federally registered trademarks in violation of Section 32 of the *Lanham Act*, 15 U.S.C. §1114. Based on such conduct, Plaintiff is entitled to injunctive relief as well as monetary damages and other remedies provided by sections 1116, 1117, and 1118, including Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

THIRD CAUSE OF ACTION

(False Designation of Origin / False or Misleading Advertising / Unfair Competition against Defendant ISAAC FREDLEY and DOES 1-10, Inclusive)

[15 U.S.C. §1125(a)/*Lanham Act* §43(a)]

55. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-54.

56. Plaintiff, as the owner of all common law right, title, and interest in and to Plaintiff's Trademarks, has standing to maintain an action for false designation of origin and unfair competition under the Federal Trademark Statute, *Lanham Act* §43(a) (15 U.S.C. §1125). Plaintiff's Trademarks are inherently distinctive and/or have acquired distinctiveness.

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57. Defendants have, without authorization, on or in connection with their goods and services, used in commerce marks that are confusingly similar to Plaintiff's Trademarks and/or have made false designations of origin which are likely to cause confusion, mistake or to deceive as to the affiliation, connection or association of Defendants with Plaintiff and/or as to the origin, sponsorship or approval of Defendants' goods or services or commercial activities.

58. Defendants' conduct described above violates the *Lanham Act*, and Defendants have unfairly competed with and injured Plaintiff and, unless immediately restrained, will continue to injure Plaintiff, causing damage to Plaintiff in an amount to be determined at trial. Defendants' actions are causing and will continue to cause irreparable injury to Plaintiff's goodwill and reputation associated with the value of Plaintiff's Trademarks.

59. On information and belief, the conduct of Defendants has been knowing, deliberate, willful, and intended to cause confusion, mistake or deception, all in blatant disregard of Plaintiff's rights.

60. Defendants knew or, by the exercise of reasonable care, should have known that their adoption and commencement of use in commerce and continuing use of marks that are confusingly similar to and constitute a counterfeit reproduction of Plaintiff's Trademarks would cause confusion, mistake, or deception among purchasers, users and the public.

61. Defendants' egregious and intentional use and sale of counterfeit and/or unauthorized software bearing Plaintiff's Trademarks unfairly competes with Plaintiff and is likely to cause confusion, mistake or to deceive, mislead, betray, and defraud consumers to believe that Defendants' unauthorized products are genuine, authorized Adobe-Branded Software.

62. Defendants' continuing and knowing use of Plaintiff's Trademarks constitutes false designation of origin and unfair competition in violation of Section 43(a) of the *Lanham Act*, 15 U.S.C. §1125(a), causing Plaintiff to suffer substantial and irreparable injury for which it has no adequate remedy at law.

63. Defendants' wrongful conduct has permitted or will permit them to make substantial sales and profits on the strength of Plaintiff's marketing, advertising, sales and consumer recognition. As a direct and proximate result of Defendants' wrongful conduct, as

alleged herein, Plaintiff has been and will be deprived of sales of its products in an amount as yet unknown but to be determined at trial, and has been deprived and will be deprived of the value of its marks as commercial assets in an amount as yet unknown but to be determined at trial. Plaintiff seeks an accounting of Defendants' profits and requests that the Court grant Plaintiff three times that amount in the Court's discretion.

64. Based on Defendants' wrongful conduct, Plaintiff is entitled to injunctive relief, including but not limited to preliminary relief, as well as monetary damages and other remedies as provided by the *Lanham Act*, including Defendants' profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

FOURTH CAUSE OF ACTION

(Trademark Dilution against Defendant ISAAC FREDLEY and DOES 1-10, Inclusive)

[15 U.S.C. §1125(c)]

65. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-64.

66. Plaintiff's Trademarks are distinctive and famous within the meaning of the *Lanham Act*.

67. Upon information and belief, Defendants' unlawful actions began long after Plaintiff's Trademarks became famous, and Defendants acted knowingly, deliberately and willfully with the intent to trade on Plaintiff's reputation and to dilute or tarnish Plaintiff's Trademarks. Defendants' conduct is willful, wanton and egregious.

68. Defendants' intentional sale of counterfeit and/or unauthorized software bearing Plaintiff's Trademarks is likely to cause confusion, mistake, or to deceive, mislead, betray, and defraud consumers to believe that Defendants' substandard and/or limited software are authorized, full retail versions of Adobe-Branded Software. The actions of Defendants complained of herein have diluted and will continue to dilute Plaintiff's Trademarks and are likely to impair the distinctiveness, strength and value of Plaintiff's Trademarks and injure the business reputation of Plaintiff and its marks.

69. Defendants' acts have caused and will continue to cause Plaintiff irreparable harm. Plaintiff has no adequate remedy at law to compensate it fully for the damages that have been

caused and which will continue to be caused by Defendants' unlawful acts, unless they are enjoined by this Court.

70. As the acts alleged herein constitute a willful violation of section 43(c) of the *Lanham Act*, 15 U.S.C. §1125(c), Plaintiff is entitled to injunctive relief, including but not limited to preliminary relief, as well as monetary damages and other remedies provided by 15 U.S.C. §§1116, 1117, 1118, and 1125(c), including Defendants' profits, treble damages, reasonable attorney's fees, costs and prejudgment interest.

FIFTH CAUSE OF ACTION

(Unlawful, Unfair, Fraudulent Business Practices against Defendant ISAAC FREDLEY and DOES 1-10, Inclusive)

[*California Business & Professions Code* §17200 *et seq*.]

71. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs 1-70.

72. By marketing, advertising, promoting, selling and/or otherwise dealing in the counterfeit and/or unauthorized Adobe-Branded Software bearing Plaintiff's Trademarks, Defendants have engaged in unfair competition including unlawful, unfair and fraudulent business practices in violation of *California Business and Professions Code* §17200 *et seq*.

73. Defendants' marketing, advertising, promoting, selling and/or otherwise dealing in counterfeit and/or unauthorized Adobe-Branded Software is in violation and derogation of Plaintiff's rights and is likely to cause confusion, mistake and deception among consumers and the public as to the source, origin, sponsorship, or quality of the goods of Defendants, thereby causing loss, damage and injury to Plaintiff and to the purchasing public. Defendants' conduct was intended to cause such loss, damage and injury.

74. Defendants knew or by the exercise of reasonable care should have known that their marketing, advertising, promoting, selling and/or otherwise dealing in and their continuing marketing, advertising, promoting, selling and/or otherwise dealing in the counterfeit and/or unauthorized product would cause confusion, mistake or deception among purchasers, users and the public.

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75. By marketing, advertising, promoting, selling and/or otherwise dealing in and their continuing marketing, advertising, promoting, selling and/or otherwise dealing in counterfeit and/or unauthorized versions of Adobe-Branded Software bearing Plaintiff's Trademarks, Defendants intended to, did and will induce customers to purchase their products by trading off the extensive goodwill built up by Plaintiff in its marks.

76. Upon information and belief, the conduct of Defendants has been knowing, deliberate, willful, and intended to cause confusion, mistake or to deceive, all in blatant disregard of Plaintiff's rights.

77. Defendants' wrongful conduct, as alleged above, has permitted and will permit them to make substantial sales and profits on the strength of Plaintiff's nationwide marketing, advertising, sales and consumer recognition. As a direct and proximate result of Defendants' wrongful conduct, as alleged herein, Plaintiff has been and will be deprived of substantial sales of its products in an amount as yet unknown but to be determined at trial, and has been and will be deprived of the value of its trademarks as commercial assets, in an amount as yet unknown but to be determined at trial. Plaintiff seeks restitution in this matter, including an order granting Defendants' profits stemming from their infringing activity, and Plaintiff's actual and/or compensatory damages.

78. Plaintiff has no adequate remedy at law for Defendants' continuing violation of its rights set forth above. Plaintiff seeks injunctive relief, including but not limited to preliminary relief.

79. Plaintiff further requests a court order that an asset freeze or constructive trust be imposed over all monies in Defendants' possession that rightfully belong to Plaintiff.

PRAYER OF RELIEF

WHEREFORE, Plaintiff Adobe Systems Incorporated prays for judgment against Defendant Isaac Fredley and Does 1-10, inclusive, and each of them, as follows:

A. For an award of Defendants' profits and Plaintiff's damages in an amount to be proven at trial for copyright infringement under 17 U.S.C. §501(a);

B. For an award of Defendants' profits and Plaintiff's damages in an amount to be proven at trial for trademark infringement under 15 U.S.C. §1114(a);

C. For an award of Defendants' profits and Plaintiff's damages in an amount to be proven at trial for false designation of origin and unfair competition under 15 U.S.C. §1125(a);

D. For an award of Defendants' profits and Plaintiff's damages in an amount to be proven at trial for trademark dilution under 15 U.S.C. §1125(c);

E. In the alternative to actual damages and Defendants' profits for the infringement and counterfeiting of Plaintiff's Trademarks pursuant to the *Lanham Act*, for statutory damages pursuant to 15 U.S.C. §1117(c), which election Plaintiff will make prior to the rendering of final judgment;

F. In the alternative to actual damages and Defendants' profits for the infringement and copying of Plaintiff's Copyrights pursuant to 17 U.S.C. §504(b), for statutory damages pursuant to 17 U.S.C. §504(c), which election Plaintiff will make prior to the rendering of final judgment;

G. For restitution in an amount to be proven at trial for unfair, fraudulent and illegal business practices under *California Business and Professions Code* §17200;

H. For consequential and compensatory damages;

I. For an injunction by this Court prohibiting Defendants from engaging or continuing to engage in the unlawful, unfair, or fraudulent business acts or practices described herein, including the advertising and/or dealing in any counterfeit and/or unauthorized product; the unauthorized use of any mark, copyright or other intellectual property right of Plaintiff; acts of trademark infringement or dilution; acts of copyright infringement; false designation of origin; unfair competition; and any other act in derogation of Plaintiff's rights;

J. For an order from the Court requiring that Defendants provide complete accountings and for equitable relief, including that Defendants disgorge and return or pay their ill-gotten gains obtained from the illegal transactions entered into and/or pay restitution, including the amount of monies that should have been paid if Defendants complied with their legal obligations, or as equity requires;

K. For an order from the Court that an asset freeze or constructive trust be imposed over all monies and profits in Defendants' possession which rightfully belong to Plaintiff;

L. For destruction of the infringing articles in Defendants' possession under 15 U.S.C. §1118 and 17 U.S.C. §503;

M. For treble damages suffered by Plaintiff as a result of the willful and intentional infringements and acts of counterfeiting engaged in by Defendants, under 15 U.S.C. §1117(b);

N. For damages in an amount to be proven at trial for unjust enrichment;

O. For Plaintiff's reasonable attorney's fees;

P. For all costs of suit; and

Q. For such other and further relief as the Court may deem just and equitable.

DATED: April 17, 2017

JOHNSON & PHAM, LLP

By: /s/ Marcus F. Chaney
Marcus F. Chaney, Esq.
Attorneys for Plaintiff
ADOBE SYSTEMS INCORPORATED

DEMAND FOR JURY TRIAL

Plaintiff Adobe Systems Incorporated respectfully demands a trial by jury in this action.

DATED: April 17, 2017

JOHNSON & PHAM, LLP

By: /s/ Marcus F. Chaney
Marcus F. Chaney, Esq.
Attorneys for Plaintiff
ADOBE SYSTEMS INCORPORATED